D.B. CIVIL SPECIAL APPEAL (CIVIL) NO.66/2001.
National Insurance Co. Ltd.
Vs.
Smt. Uchhav Kanwar.

Date of Order :: 2nd July 2007.

HON'BLE MR. JUSTICE P.B. MAJMUDAR
HON'BLE MR. JUSTICE DINESH MAHESHWARI

Mr. Sanjeev Johari, for the appellant.
Mr. Trilok Joshi for
Mr. Narpat Singh]
Mr. Rajesh Panwar], for the respondents.

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This special appeal is directed against the judgment dated 21.05.2001 passed by the learned Single Judge in S.B. Civil Misc. Appeal No.477/2001 by which the learned Single Judge has dismissed the appeal filed by the present appellant while affirming the award dated 19.07.2000 made by the learned Motor Accidents Claims Tribunal, Bikaner in Claim Case No.134/1993.

The claimants are the parents of the deceased who was aged 22 years and who died in motor accident. On appreciation of the evidence, the learned Tribunal awarded compensation of Rs.1,70,000/- in favour of the claimants and fastened liability on the appellant-insurer. The aforesaid award dated 19.07.2000 of the learned Tribunal was challenged before the learned Single Judge on the ground that the Tribunal had erred in coming to the conclusion that there was valid insurance existing at the time of accident.

Learned counsel Mr. Sanjeev Johari appearing for the appellant insurer Company submitted that the accident had occurred on 14.04.1993 and on that date the vehicle was not insured with the appellant. It is submitted that the insurance policy commenced two days after the incident and in that view of the matter, the insurance company could not have been held liable for making the payment of compensation as there was no valid insurance on the relevant date when accident took place. This point was taken before the learned Tribunal and the learned Tribunal decided the aforesaid point by framing issue No.3. On appreciation of the evidence, the learned Tribunal came to the conclusion that the insurance company has failed to prove the fact that the insurance coverage was from 16.04.1993 to 15.04.1994. The Tribunal found that the theory put forward by the insurance company is doubtful and there are manipulations in the cover note. The learned Single Judge also examined this aspect and affirmed the findings of the Tribunal.

The only point submitted before us by learned counsel Mr. Johari appearing for the appellant insurer is that on the relevant date i.e., 14.04.1993, the vehicle in question was not insured with the appellant Company and, therefore, the insurance company was not liable to make any payment. In this connection, we have gone through the record including the

cover note which is produced on record as Exhibit NA-1 and from the perusal of the same, it is clear that there are changes manipulated in the date of starting of insurance policy. The learned Single Judge has, in our view, rightly held that the cover note was materially manipulated. Not only that, the said aspect is accepted by the witness of the appellant insurer about alteration in the date of commencement of the insurance policy. The learned Tribunal has also dealt with this aspect in great detail. The learned Tribunal considered the statements of Hanumanaram, owner of the bus and Gajendra Singh, Development Officer of insurance company. Both the said witnesses admitted that one Rameshwar Lal Suthar was the agent of the appellant insurance company and the cover note Ex.NA-1 was filled in by the said agent. The owner of the vehicle has also stated that he paid the premium on 13.04.1993 to Rameshwar Lal Suthar, agent of the insurance company. He has also quantified the amount of premium at Rs.3,650/- and stated that on such payment, the cover note was issued. In that view of the matter, it is clear that on the relevant date when the accident took place, the insurance cover note was already issued by the appellant insurance company and that even otherwise as per the evidence of the witnesses of the insurance company, the dates in the cover note were changed for which no reasonable explanation has

been given by the appellant insurance company. The appellant insurance company has not even examined their said agent when it was specifically the case of the owner of the vehicle that he has given Rs.3,650/- on 13.04.1993 to the agent of the insurance company, Rameshwar Lal Suthar. It was the duty of the appellant insurer to examine the said agent. When these aspects have been properly considered by the learned Tribunal as well as by the learned Single Judge, we do not find any justification in taking any different view from the one taken by the Tribunal especially when on examination of the cover note, it is apparent that there are manipulations in the cover note. The original insurance policy has not been produced by the appellant insurer before the learned Tribunal.

Considering the aforesaid aspects of the matter, we are not in a position to accept the contention of the learned counsel Mr. Johari appearing for the appellant insurer that on the relevant date, the vehicle was not insured with the appellant.

Learned counsel Mr. Johari submitted that the original owner of the vehicle had sold the vehicle and, therefore, there was no reason for him thereafter to make the payment of premium as he has already transferred the vehicle. We are not impressed by this argument as it is not in dispute that there are changes and manipulations in the cover note and once it is

held that the cover note is issued by the appellant insurance company covering the period in question, it cannot be said that the vehicle was not insured and then, it is immaterial who had paid the premium as the stand of the insurance company cannot be accepted. The argument of learned counsel Mr. Johari appearing for the appellant insurer only in the realm of creating some doubt but not decisive of the point that there was no valid insurance for the vehicle in question.

Considering the facts and circumstances of the case, we see no reason to interfere with the order of the learned Single Judge passed in S.B. Civil Misc. Appeal No.477/2001. Hence, this appeal is dismissed with no order as to costs.

(DINESH MAHESHWARI), J. **(P.B. MAJMUDAR), J.**

Mohan/